IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. 13062-M of 2005

DATE OF DECISION : 27.11.2006

M/s Larsen and Toubro Ltd.

.... PETITIONER

Versus

Central Bureau of Investigation and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Ashok Aggarwal, Senior Advocate, with
Mr. Subhash Gulati and Mr. Rajnish Narula, Advocates,
for the petitioner.

Mr. Chanchal K. Singla, Advocate,
for the CBI.

Mr. N.S. Gill, AAG, Punjab.

Mr. H.S. Riar, Senior Advocate, with
Mr. K.S. Nalwa and Mr. Rahul Gupta, Advocates,
for respondent No.6.

Mr. K.T.S. Tulsi, Senior Advocate, with
Mr. K.S. Nalwa and Mr. V. Hari Pillay, Advocates,
for respondent No.7.

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Initially, the petitioner had filed this petition under Articles 226/227 of the Constitution of India, which was treated as one under Section 482 of the Code of Criminal Procedure (hereinafter referred to as `the Code'), vide order dated February 25, 2005, passed by this Court.

2. M/s Larsen and Toubro Limited (hereinafter referred to as the petitioner company) has filed this petition for issuing direction to respondents No.1,2 and 5 to register an FIR against M/s Abhishek Industries Limited-respondent No.6 (hereinafter referred to as the respondent company) and its Director Rajinder Gupta-respondent No.7, for

committing the offence of criminal breach of trust, cheating, criminal intimidation, forcible taking of signatures in order to commit fraud/ extortion, mis-appropriation of equipments, material and machinery of the respondent company and for false implication of the petitioner company in a criminal case, which were committed by them on 27.7.2004 and 28.7.2004.

3. The facts and events, which are necessary for the disposal of this case, are re-produced in chronological order.

4. The petitioner company entered into a contract on 14.11.2003 with the respondent company for the construction of weaving and processing unit of the respondent company at Village Dhaula, Barnala (Punjab). As per the terms of the contract, the said work was required to be completed by the petitioner company by 30.4.2004, which was subsequently extended upto 31.7.2004. It is the case of the respondent company that in a meeting held between the petitioner company and the respondent company on 27.7.2004, it was agreed that the petitioner company would complete the work and wind up the site by 31.8.2004, failing which the petitioner company shall not be given further opportunity and the balance work shall be completed at the risk and cost of the petitioner company. Though it is the case of the petitioner company that signatures of Shri S. Subramaniam, their Construction Manager, were taken forcibly under duress, but the matter was not reported to the police on the same day or on the next day.

5. On 28.7.2004, one employee of the respondent company, namely Basant Singh, lodged a complaint to the police alleging therein that at about 10.00 a.m., when the complainant along with other officers of the company was taking routine round at the site of construction, they found that proper material was not being used by the representatives of the petitioner company. When they pointed out the defects, the officials of the petitioner company became agitated. Suddenly, certain officials of the petitioner company and many workers assembled and Shri S. Subramaniam, Construction Manager, started hurling filthy abuses and he exhorted the group of officials and labourers to catch hold the officers of the respondent

company and to threw them into furnace of the boiler of the adjoining plant. Thereupon, a group of about 10 workers from the said mob, who were armed with lathies, came forward and one of the workers hit the lathi in the head of the complainant Basant Singh in order to kill him. The other workers attacked the officials of the respondent company with their weapons and tried to catch hold them and gave beatings to them. Subsequently, those workers assembled in front of the Administrative block of the Project Officer of the respondent company and started pelting stones and raising slogans and they caused damage to the machines installed in TTD Unit II. On the basis of this complaint, FIR No. 126 dated 28.7.2004 was registered against the officials and workers of the petitioner company at Police Station Tapa under Sections 307/364/452/427/511/148/149/120-B IPC. In the FIR, the complainant specifically named 16 officials of the petitioner company who had participated in the assault.

6. On 29.7.2004, petitioner company wrote a letter to the DGP, Punjab, requesting for a fair investigation in the aforesaid FIR by some senior police officer from outside Police District Barnala and for cancellation of the case. According to the petitioner company, its officials were falsely implicated in the FIR. In the said letter, it was alleged that the respondent company is having vast influence among the civil as well as police officials of Police District Barnala and with the said influence, they got registered the false FIR on concocted story, which is highly improbable. It is mentioned here that in the said letter, neither counter version was given nor any prayer for registration of the case on the said version was made.

7. On 31.7.2004, respondent company sent a notice to the petitioner company under clause 6.2 of the contract, calling upon the petitioner company to complete the project as per the contract within seven days, failing which the contract would be terminated. On 3.8.2004, a letter was written by the petitioner company to the Home Minister, Government of India, Director General, Central Bureau of Investigation and the Chairman, National Human Rights Commission requesting for intervention

and ordering an impartial enquiry into the alleged occurrence. It was alleged that a false case was foisted against the officials and workers of the petitioner company by the respondent company. On the other hand, the officials and labourers of the petitioner company were assaulted and criminally intimidated by the officials and employees of the respondent company. With the said letter, a note was annexed, in which it was alleged that the petitioner company had completed 90% work of the contract by 31.7.2004. It was also alleged in the note that on 27.7.2004, Mr. S. Subramaniam, Construction Manager of the petitioner company was threatened at gun point and was made to sign the minutes of meeting in the office of respondent No.7, as per which the petitioner company was required to either leave the site on the next day i.e. on 28.7.2004 or to complete the work by 31.8.2004. It was further alleged that on 28.7.2004, respondent No.7 and some other officers of the respondent company came at the site and beat up some labourers of the petitioner company without any rhyme or reason. Thereafter, 60-70 police personnel reached the site and instead of taking action against the respondent company, some of the senior officials of the petitioner company were taken to the police station, whereafter, they were taken into custody. It was alleged that a large number of machinery, equipments and material lying at the site have been illegally removed by the employees of the respondent company and a false case was registered against the officials of the petitioner company.

8. On 26.8.2004, the respondent company wrote a letter to the petitioner company about the termination of contract, because the petitioner company failed to resume work despite the legal notice served upon it. On 28.8.2004, another letter was written by the respondent company to the petitioner company informing the taking over of the project site and works with immediate effect in terms of the contract dated 14.11.2003. On 31.8.2004, a civil suit was filed by the respondent company seeking permanent injunction restraining the petitioner company and its officials from interfering in the due execution/completion of construction work of

respondent company's weaving and processing unit. Vide order dated 2.9.2004, passed by Additional Civil Judge (Senior Division), Barnala, ad-interim injunction was granted in favour of the respondent company restraining the petitioner company from interfering in the due construction work of the disputed project. This interim order was confirmed by the civil court on 16.12.2004, after hearing counsel for the parties. On 28.9.2004, the petitioner company filed a petition under Section 8 of the Arbitration and Conciliation Act for referring the matter to arbitration and for rejection of the aforesaid civil suit. The said application was dismissed by the civil court on 16.10.2004.

9. In FIR No. 126 dated 28.7.2004, after investigation, charge sheet was prepared on 28.10.2004 and it was filed in the court on 11.11.2004 under Sections 308/452/364/511/382/506/120-B/427/148/149 IPC. On 28.5.2005, charges were framed against the accused in the said case by Additional Sessions Judge, Barnala and the case was fixed for prosecution evidence. It is also relevant to mention here that Crl. Misc. No. 53127-M of 2004 was filed by the petitioner company for quashing of aforesaid FIR, which was dismissed as withdrawn with liberty to challenge the charges. Vide order dated 13.9.2005, passed by this court, Crl. Revision No. 1712 filed against the charges has also been dismissed.

10. On 2.2.2005, the present petition was filed for registration of the case against the respondent company and its officials including its Managing Director, alleging therein that in spite of the information given by the petitioner company to the DGP of the State vide letter dated 29.7.2004 and to the National Human Rights Commission vide letter dated 3.8.2004, disclosing the cognizable offences allegedly committed by the officials and employees of the respondent company, no FIR has been registered so far, as the respondent company is having influence in the District. Therefore, a direction has been sought for registration of criminal case against them. It is stated that in the letter dated 3.8.2004, it was specifically alleged that on 27.7.2004, Shri S. Subramaniam, the Construction Manager of the petitioner

company was threatened at gun point and was made to sign the minutes of meeting in the office of respondent company under duress. On 28.7.2004, the officials and other employees of the respondent company came to the site and gave beating to the employees and workers of the petitioner company without any rhyme or reason and some of the senior officials of the petitioner company were taken to the police station where they were taken into custody. It was further stated that officials and employees of the respondent company removed and mis-appropriated the machinery and equipments of the petitioner company, which were lying at the construction site. These allegations, according to the petitioner company, clearly disclose the cognizable offence and on information given by it, the police was duty bound, under Section 154 of the Code, to register a criminal case against the guilty persons, but the local police under the influence of the respondent company did not register the case against the guilty persons.

11. The State of Punjab, Shri G.S. Dhillon, Senior Superintendent of Police, Sangrur-respondent No.3, SHO, Police Station Tapa, District Sangrur-respondent No.4 and respondents No.6 and 7 filed their separate replies to the petition.

12. Respondent No.4, in his written statement, stated that the petitioner company neither approached the answering respondent nor made any written complaint to him or to the Superintendent of Police for registration of a criminal case. However, the petitioner company approached the National Human Rights Commission for fair investigation in the FIR. It has been further stated that on directions of the Commission, the matter was enquired into and the allegations were found to be false. Thereupon, a report was sent to the Commission through Deputy Commissioner, Sangrur, vide memo dated 11.1.2005, copy of which has been annexed with the reply. In the reply, filed on behalf of the State of Punjab, it has been stated that the petitioner company has an alternative remedy under Section 200 of the Code for filing complaint regarding its counter version. The Senior Superintendent of Police, Sangrur-respondent No.3, in his reply, has stated

that he has been un-necessarily implicated on the false allegations. He never remained Senior Superintendent of Police, at Barnala, where the alleged incident took place nor he was supposed to make an enquiry because Barnala is a separate Police District headed by another Senior Superintendent of Police.

13. Respondent company and its Director (respondents No.6 and 7) in their reply have stated that the petitioner company has approached this court by suppressing the material facts. The pendency of civil suit between the parties has not been disclosed. The filing of the petition for quashing of FIR and challenging the order of charge have also not been disclosed. The petitioner company has an alternative remedy and in the facts and circumstances of the present case, the instant petition is not maintainable. It has been stated that the allegations levelled by the petitioner company are totally false and during the enquiry made by the authorities on the complaint made by the petitioner company to the National Human Rights Commission, the allegations were found to be false. It has been denied that signatures of Shri S. Subramaniam, Construction Manager of the petitioner company, were obtained at gun point. No complaint was lodged by the said Construction Manager against the answering respondents in this regard. Even in the first complaint made by the petitioner company to the DGP on 29.7.2004, no such allegation was levelled. These allegations are after-thought. In the FIR, lodged on the complaint of the official of the respondent company, a detailed enquiry was held, investigation was conducted and thereafter, challan was filed and charges have been framed. Now the said case is stated to be pending at the stage of prosecution evidence. In view of these facts, a prayer has been made for dismissal of the petition.

14. Shri Ashok Aggarwal, learned Senior Counsel, assisted by Shri Subhash Gulati and Shri Rajnish Naruala, Advocates, for the petitioner company, while referring to the decisions of the Supreme Court in ***State of Haryana and others*** versus ***Ch. Bhajan Lal and others,*** AIR 1992 Supreme

Court 604, ***Ramesh Kumari*** versus ***State (N.C.T. of Delhi)and Ors.,*** 2006 I Apex Decisions (Crl.) S.C. 505 and ***Lallan Chaudhary & Ors.*** versus ***State of Bihar & Ors.,*** Criminal Appeal No. 1047 of 2006, decided on October 12, 2006, submitted that when an information disclosing a cognizable offence is given to the incharge of a police station by a person, or he otherwise receives such an information, the said police officer is duty bound to register the FIR for the alleged offence. Learned counsel submitted that Section 154 of the Code raises a statutory duty upon a police officer to register the case as disclosed in the complaint and then to proceed with the investigation. He has no other option except to register the case on the basis of such information. Learned counsel submitted that it has been held by the Supreme Court in these judgments that the provision of Section 154 of the Code is mandatory, the police officer concerned is duty bound to register the case on receiving the information disclosing the cognizable offence. The reliability, genuineness or credibility of the information is not a condition precedent for registration of the case. A police officer on a preliminary enquiry cannot refuse to register a case on the ground that information is false or not reliable or credible.

15. Learned Senior Counsel for the petitioner company submitted that in this case, though the written information was not given to the SHO and Superintendent of Police of the concerned area, but they received the information, when the complaint made by the petitioner company to the National Human Rights Commission came to the SHO of the concerned area for enquiry. While referring to the reply filed on behalf of the State of Punjab, learned counsel submitted that the letter dated 3.8.2004, sent by the petitioner company to the Commission was received by the police on 29.10.2004, as has been stated in the letter written by Senior Superintendent of Police, Barnala to Deputy Commissioner, Sangrur, intimating that in the complaint made by the petitioner company to the National Human Rights Commission, an enquiry was conducted and the allegations made by it were found to be false. But in spite of the information gathered by the police from

the said letter, no FIR was registered, and enquiry was conducted without registering the case, which, according to the learned counsel, is not permissible. It was also submitted that in FIR No. 126 dated 28.7.2004, challan was prepared on 28.10.2004, which was submitted to the court on 11.11.2004. Learned counsel contended that from the perusal of the challan, copy of which has been placed on record, it appears that version of the petitioner company pertaining to the occurrence dated 27.7.2004 and 28.7.2004 was not considered at all, as there is no reference in the challan that the version given by the petitioner company was found to be false.

16. Shri N.S. Gill, AAG, Punjab, Shri H.S.Riar, learned Senior Counsel, assisted by Shri K.S. Nalwa and Shri Rahul Gupta, Advocates, for respondent company (respondent No.6) and Shri K.T.S. Tulsi, learned Senior Counsel, assisted by Shri K.S. Nalwa and Shri V. Hari Pillay, Advocates, for respondent No.7, submitted that in this case, undisputedly, the petitioner company or any of its employees, including Shri S. Subramaniam, Construction Manager, neither made written or oral complaint about the alleged incidents of 27.7.2004 and 28.7.2004 to the SHO of the concerned area or to the Senior Superintendent of Police of the District nor they have made any written complaint to the Judicial Magistrate of the area under Section 156 (3) or Section 200 of the Code. On 29.7.2004, a letter was written by the petitioner company to the Director General of Police, Punjab, requesting him for a fair investigation by an officer from outside Police District Barnala in FIR No. 126 dated 28.7.2004 registered against its employees. In the said letter, no counter allegations, as made in the petition, were made. Subsequently, on 3.8.2004, a letter was written to the Home Minister, Government of India, Director General, Central Bureau of Investigation and the Chairman, National Human Rights Commission and when the Commission referred that letter to the district administration for enquiry and report, the allegations levelled in the said letter were enquired into and were found to be false. Learned counsel submitted that on such an enquiry sought by the National Human Rights Commission, the police is not

required to register a criminal case, as the petitioner company was having a remedy for making a written complaint to the SHO of the concerned area or to the Senior Superintendent of Police of the District or to file a complaint before the Judicial Magistrate. Learned counsel submitted that when the complaint was received through the National Human Rights Commission, it was enquired into by the police and the allegations were rightly found to be false, because apparently the allegations were concocted after registration of the case against the officials and employees of the petitioner company. This is clear from the fact that in the letter dated 29.7.2004, written by the petitioner company immediately after the registration of the case, no such allegations were levelled and only the prayer was made for a fair enquiry in the FIR and cancellation of the same, as according to the petitioner company, it was lodged on false facts. At that time, there was no cross version. Learned counsel contended that this fact in itself proves that the allegations regarding the occurrence of 27.7.2004 and 28.7.2004, levelled by the petitioner company subsequently in its letter dated 3.8.2004 are false and concocted.

17. Learned counsel further submitted that the inherent powers of this court under Section 482 of the Code are discretionary powers and the same are to be exercised in an exceptional or extra ordinary situation to prevent the abuse of the process of the court or otherwise to secure the ends of justice. Learned counsel further submitted that such extra ordinary powers are not to be exercised, when the complainant has an effective and alternative remedy. As per the scheme of the Code, the petitioner company has an alternative remedy to make a complaint to the Judicial Magistrate for referring the same under Section 156 (3) of the Code for registration of the case or under Section 200 of the Code for taking cognizance of the alleged offence against the accused. In support of their contention, learned counsel for the respondents referred to the decision of the Supreme Court in ***All India Institute of Medical Sciences Employees' Union (Regd.)*** versus ***Union of India and others,*** (1996) 11 Supreme Court Cases 582,

Gangadhar Janardan Mhatre versus ***State of Maharashtra and others,*** (2004) 7 Supreme Court Cases 768 and ***Minu Kumari and anr.*** versus ***State of Bihar,*** 2006 (3) RCR (Criminal) 271, wherein it has been held that when on on an information disclosing the cognizable offence laid with the police, no action is taken, the complainant is given power under Section 200 of the Code to lay the complaint before the Judicial Magistrate having jurisdiction to take cognizance of the offence. If such complaint is made to the Magistrate, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit the report. If on recording the evidence, he finds that no offence is disclosed to take further action, he is empowered to dismiss the complaint under Section 203 of the Code and in case he finds that there is prima facie evidence disclosing an offence, he is empowered to take cognizance of the offence and to proceed against the accused. It has been held in these judgments that in case, the complainant does not adopt either of the procedure provided under the Code, he is not entitled to approach the High Court by filing petition for issuing a direction to register the case and investigate the alleged offence.

18. Learned counsel submitted that the judgment in ***Ramesh Kumari*** versus ***State (N.C.T. of Delhi)and Ors.,*** and ***Lallan Chaudhary & Ors.*** versus ***State of Bihar & Ors.,*** (supra) are not applicable to the facts and circumstances of the case in hand and they are distinguishable on facts. In ***Ramesh Kumari's case***, the written information disclosing the cognizable offence was given to the SHO of the concerned area and when the case was not registered, the matter was brought to the notice of the Police Commissioner. Even then, when the FIR was not registered, petition under Section 482 of the Code was filed before the High Court, which was dismissed. In that situation, it was held by the Supreme Court that when a written information disclosing the cognizable offence was given to the police, then under Section 154 of the Code, the police was duty bound to register the case. Similarly in ***Lallan Chaudhary's case***, a complaint was

filed before the Judicial Magistrate disclosing the cognizable offences under various offences under various Sections of IPC. The said complaint was referred by the Judicial Magistrate to the police under Section 156 of the Code. The SHO concerned did not register the case under those offences. In that situation, it was observed that when the complaint was referred by the Judicial Magistrate to the police, the police was duty bound to register the case for all the offences mentioned in the complaint. Learned counsel for the respondents submitted that in these two cases, the written information was given to the police disclosing cognizable offence and in spite of that, the FIR was not registered. In that situation, it has been observed by the Supreme Court that when a written information is given to the SHO of the concerned area, he is duty bound to register the case. The facts in the instant case are entirely different. In this case, undisputedly, no written or oral information was given to the SHO of the concerned area nor any complaint was filed in that regard before the Judicial Magistrate. In view of these facts, the decisions given by the Supreme Court in ***All India Institute of Medical Sciences Employees' Union (Regd.)*** versus ***Union of India and others,*** (supra) ***Gangadhar Janardan Mhatre*** versus ***State of Maharashtra and others,*** (supra) and ***Minu Kumari and anr.*** versus ***State of Bihar*** (supra) are applicable. Thus, according to learned counsel, in view of the fact that in spite of the availability of alternative remedy, the petitioner has not availed the same, no direction can be issued for registration of the case at a belated stage, when in the FIR lodged against the officials of the petitioner company, not only challan has been filed, but after framing of charge, the case is at the stage of prosecution evidence.

19. Shri H.S. Riar, Senior Counsel for respondent No.6, assisted by Shri K.S. Nalwa and Shri Rahul Gupta, Advocates, submitted that the observations made by the Supreme Court in ***State of Haryana and others*** versus ***Ch. Bhajan Lal and others,*** AIR 1992 Supreme Court 604 (supra) were in different situation. In that case, an FIR was registered against Ch. Bhajan Lal, the then Chief Minister of the State. In a petition for quashing

of FIR on his behalf, an argument was raised that before registration of a criminal case, the police should have undertaken a preliminary enquiry and satisfy themselves that there is sufficient material to proceed against. Accepting the said argument, the FIR was quashed by the High Court. This order of the High Court was set aside by the Supreme Court. It was observed by the Supreme Court that on gathering an information disclosing the cognizable offence, the police was under an obligation to register a case. Learned Senior Counsel submitted that the facts and circumstances of the instant case are not similar. Here, no written or oral information was given to the SHO of the area or to the Senior Superintendent of Police of the District. While referring to the judgments of this court in ***Dilbag Singh Poonia*** versus ***Director General of Police, Haryana,*** 1998 (3) RCR (Criminal) 743 and ***Mithlesh Kumari*** versus ***State of Punjab,*** 2002 (4) RCR (Criminal) 541, learned Senior Counsel submitted that this court has consistently taken the view that when on a complaint disclosing the cognizable offence, the police does not register the case, then in each and every case, the High Court should not issue direction to the police for registration of a case, where the complainant can adopt the alternative remedy of making complaint to the Judicial Magistrate for registration of the case under Section 156 (3) or for taking cognizance of the alleged offence under Section 200 of the Code. In those cases, it has been held that the extra ordinary power of this Court cannot be invoked without first availing statutory alternative remedy. In view of this factual and legal position, learned counsel for the respondents submitted that at this belated stage, the petition filed by the petitioner for issuing direction to register case should not be entertained in exercise of the extra ordinary power of this Court.

20. After hearing the arguments of learned counsel for the parties, in the facts and circumstances of the case, I do not find any ground to issue the direction sought for in this petition, in exercise of the inherent powers of this Court. For an alleged occurrence dated 28.7.2004, on a complaint made

by Basant Singh, an employee of the respondent company, FIR No. 126 was registered at Police Station Tapa, against the employees of the petitioner company under Sections 307/364/452/427/511/148/149/120-B IPC. The petitioner company alleged a counter version regarding the said occurrence, in which its officials and employees were given beatings by the officials of the respondent company; Mr. S. Subramaniam, Construction Manager of the petitioner company was threatened at gun point and was made to sign the minutes of meeting in the office of respondent No.7; the machinery, equipments and material belonging to the petitioner company, lying at the site were illegally removed by the employees of the respondent company; and a false case was registered against the officials of the petitioner company. Undisputedly, the petitioner company did not make any complaint or gave any information to the SHO or the SSP of the concerned area for registration of criminal case against the officials or employees of the respondent company for the alleged occurrence of 27.7.2004 and 28.7.2004. For the first time, on 29.7.2004, a letter was written to Director General of Police, Punjab, requesting him for fair investigation of case FIR No. 126 dated 28.7.2004 alleging that officials of the petitioner company were falsely implicated and the said FIR should be cancelled. In that letter, no allegation of giving beatings to the employees of the petitioner company, taking signatures of its Construction Manager, namely Shri S. Subramaniam under duress or removing its machinery, equipments etc. was mentioned. Thereafter, on 3.8.2004, a letter was written by the petitioner company to the Government of India and the National Human Rights Commission. In that letter also, a request was made for fair investigation in the aforesaid FIR, in which employees of the petitioner company were alleged to be falsely implicated. With the said letter, a note was annexed alleging for the first time that on 27.7.2004, Mr. S. Subramaniam, Construction Manager of the petitioner company was threatened at gun point and was made to sign the minutes of meeting in the office of respondent No.7. It was further alleged that on 28.7.2004, respondent No.7 and some other officers of the

respondent company came at the site and beat up some labourers of the petitioner company without any rhyme or reason. Thereafter, 60-70 police personnel reached the site and instead of taking action against the respondent company, some of the senior officials of the petitioner company were taken to the police station, whereafter, they were taken into custody. It was alleged that a large number of machinery, equipments and material lying at the site have been illegally removed by the employees of the respondent company and a false case was registered against the officials of the petitioner company. The said letter was sent for enquiry by the National Human Rights Commission to the district administration and the Deputy Commissioner, Sangrur, got enquired the matter from Deputy Superintendent of Police, Tapa and the Sub Divisional Magistrate, Barnala. Copies of reports submitted by both these officers are available on the record. Sub Divisional Magistrate, Barnala, after providing an opportunity of hearing to the parties and after recording their statements, came to the conclusion that the allegations levelled by the petitioner company were false and Deputy Superintendent of Police, Tapa found that the allegations were false and levelled with a motive to create defence in FIR No. 126 dated 28.7.2004 registered against its employees.

21. Undisputedly, in FIR No. 126 dated 28.7.2004, challan was filed, charge has been framed and the case is at the stage of prosecution evidence. It is also not disputed that the petitioner company filed Crl. Misc. No. 53127-M of 2004 for quashing of FIR, which was dismissed as withdrawn with liberty to challenge the charged framed against them. Thereafter, petitioner company filed Criminal Revision No. 1712 of 2005, challenging the order of charge, which was also dismissed by this court on 13.9.2005. Undisputedly, on 31.8.2004, a civil suit was filed by the respondent company for permanent injunction restraining the petitioner company and its officials from interfering in the due execution/completion of construction work of the respondent company's weaving and processing unit. The interim injunction was granted in favour of the respondent

company restraining the petitioner company from interfering in the due construction work of the disputed project. This interim order was confirmed by the civil court after hearing both the parties on 16.12.2004. The application filed by the petitioner company under the Arbitration and Conciliation Act has also been dismissed.

22. It is the contention of learned Senior Counsel for the petitioner company that when the police received the information from the letter, which was referred by the National Human Rights Commission to the police for enquiry, the police should have registered the criminal case, because as per the mandate of Section 154 of the Code, the police is duty bound to register the case on receiving information disclosing the cognizable offence from any source, though no written information was given by the petitioner company to the SHO or the Senior Superintendent of Police of the concerned area. Therefore, the police has failed to discharge its statutory duty. In that situation, this Court, in exercise of its inherent powers under Section 482 of the Code, should issue direction for registration of a criminal case. In support of this contention, learned Senior Counsel for the petitioner company has relied upon three judgments of the Supreme Court in ***State of Haryana and others*** versus ***Ch. Bhajan Lal and others,*** AIR 1992 Supreme Court 604, ***Ramesh Kumari*** versus ***State (N.C.T. of Delhi)and Ors.,*** 2006 I Apex Decisions (Crl.) S.C. 505 and ***Lallan Chaudhary & Ors.*** versus ***State of Bihar & Ors.,*** Criminal Appeal No. 1047 of 2006, decided on October 12, 2006.

23. In my opinion, the aforesaid judgments, cited by learned Senior Counsel for the petitioner company, are not applicable to the facts and circumstances of this case. In ***Bhajan Lal's case***, it was observed that before registration of the case, on an information, the police is not required to conduct a preliminary enquiry and if in the information given to the police, cognizable offence is disclosed, the police is duty bound to register the case and then investigate the matter. In ***Ramesh Kumari's case***, a written complaint was made to the SHO of the area disclosing a cognizable offence

against the police officials, but no case was registered and when the matter was brought to the notice of Police Commissioner, no action was taken. In that situation, the Supreme Court observed that the police is duty bound to register the case on written information given to the police disclosing the cognizance offence. In ***Lallan Chaudhary's case***, a complaint was referred by the Judicial Magistrate under Section 156 of the Code to the police for investigation of the complaint and for registration of the case and when the police did not register the case for all the offences, it was observed that the police was duty bound to register the case pertaining to all the cognizable offences disclosed in the complaint. The facts in the present case are entirely different. Here, on a version given by the respondent company, FIR was registered. For the alleged version or counter version of the petitioner company, no oral or written information was given to the SHO or the Senior Superintendent of Police of the concerned area. When for the first time, the letter was written on 29.7.2004 by the petitioner company to the Director General of Police, Punjab, nothing was mentioned about the allegations levelled on 3.8.2004 in the note annexed with the letter sent by the petitioner company to the National Human Rights Commission.

24. This petition was filed in this Court on 2.2.2005, after a long delay, for issuing direction to register case, particularly, without availing the alternative remedy of filing a complaint before the Judicial Magistrate for referring the same for registration of case under Section 156 of the Code or for taking cognizance of the offence under Section 200 of the Code.

25. In ***All India Institute of Medical Sciences Employees' Union (Regd.)*** versus ***Union of India and others,*** (1996) 11 Supreme Court Cases 582 (supra), it has been observed that on every information relating to the commission of a cognizable offence, the police is required to register a case and then to investigate into it. But when the information is made before the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Judicial Magistrate having jurisdiction. The Magistrate is

required to enquire into the complaint as provided in Chapter XV of the Code. In case, the Magistrate, after recording evidence, finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit the report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and to issue process to the accused. In that case, when the petitioner had not adopted the said procedure and approached the court for issuing the direction, it was observed that the petitioner is not entitled to approach the High Court for seeking direction to conduct an investigation by the Central Bureau of Investigation, without available the other remedy.

26. Again in ***Gangadhar Janardan Mhatre*** versus ***State of Maharashtra and others,*** (2004) 7 Supreme Court Cases 768 (supra), the Supreme Court considered the scope of maintainability of a writ petition without availing the alternative remedy and has observed as under :-

> "When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the

> complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India.* It was specifically observed that a writ petition in such cases is not to be entertained."

In ***Minu Kumari and anr.*** versus ***State of Bihar,*** 2006 (3) RCR (Criminal) 271 (supra), same view has been reiterated by the Supreme Court, while observing as under :-

> "When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in ***All India Institute of Medical Sciences Employees' Union (Regd.) through its President v. Union of India and others, 1997 (4) RCR (Crl.) 594 : (1996 (11) SCC 582).*** It was specifically observed that a writ petition in such cases is not to be entertained.

> The above position was highlighted in ***Gangadhar Janardan Mhatre v. State of Maharashtra and Ors. 2004 (4) RCR (Crl.) 682 : 2004 (3) Apex Criminal 648 : (2004 (7) SC 768).***"

Similar view has been taken by this Court in ***Jarnail Singh*** versus ***State of Punjab,*** 1997 (4) RCR (Criminal) 221 and ***Dilbag Singh Poonia*** versus ***Director General of Police, Haryana,*** 1998 (3) RCR (Criminal) 743 (supra) and ***Mithlesh Kumari*** versus ***State of Punjab,*** 2002 (4) RCR (Criminal) 541 (supra). In ***Mithlesh Kumari's case***, this Court has observed as under :-

> "What is the remedy of a person, who is aggrieved by illegal refusal of the officer in charge of the police station to register the FIR ? Under rule 24.4 of the PPR, there is a statutory obligation on the officer in charge to intimate the informant that the FIR was not being registered. Such information must be sent at the earliest and depending upon the nature of the case, inference can be drawn that the officer in charge has refused to register the FIR, even where no intimation is received. The Code of Criminal Procedure extends safeguards against such a decision, if the same is arbitrary. One safeguard is to approach the higher officers under Section 154 (3) Cr.P.C., which provides for approaching the Superintendent of Police who "if satisfied that such information discloses the commission of cognizable offence, can investigate the case himself or direct investigation by a police officer subordinate to him." The Superintendent of Police is also not expected to act mechanically, as the statute itself requires him "to be satisfied that such information discloses commission of a cognizable offence." In case the Superintendent of Police wrongly fails to register the FIR and direct investigation of the case, remedy is available under Section 156 (3) of the Code to move a Magistrate empowered to take cognizance under Section 190

Cr.P.C. to direct investigation and the said power has been held to the include power to direct registration of the FIR. The Magistrate is also not expected to act mechanically, but to satisfy himself that an order under Section 156 (3) Cr.P.C. was warranted. If the order of the Magistrate directing investigation or refusing to direct investigation is erroneous, the same is open to challenge in appropriate proceedings under the Code of criminal Procedure. The Magistrate has also the power to directly take cognizance in appropriate cases and either to issue process under Section 204 Cr.P.C. or to postpone the issue of process pending enquiry by himself or pending investigation by police officer. While summoning an accused, the Magistrate has also powers under Section 205 Cr.P.C. to dispense with personal attendance of an accused. The Magistrate can also call for report from the police officer conducting investigation about the progress of investigation, if the complaint is filed before the Magistrate under Section 210 Cr.P.C.

....

While deciding the course of action to be taken in the present case, it is also necessary to decide as to whether a petition will lie under Section 482 Cr.P.C. in the present case. Section 482 Cr.P.C. saves inherent powers of the High Court to give effect to any order under the Cr.P.C., to prevent abuse of process of the Court or to secure the ends of justice. In ***Madhu Limay v. State of Maharashtra, AIR 1978 SC 47,*** it was held that the power was not to be resorted to, if there was a specific provision in the Code; the power has to be exercised very sparingly and it should not be exercised as against the express bar of law. Normally specific statutory remedy under Sections 190 and 200 of the Cr.P.C. has to be first resorted to where there is any wrongful action or refusal on the part of the police

> or the Superintendent of Police in the matter of registration of FIR. In a rare case, the High Court may exercise its inherent power. Exercise of the inherent power by the High Court to examine whether the FIR is to be registered or not is not a routine.
>
> ...
>
> A petition under Section 482 Cr.P.C. will not be a `routine' remedy in the matter, unless remedy of approaching the Magistrate has been exhausted. In a case presenting special features, the High Court can go into the matter under Section 482 Cr.P.C. or under Article 226 of the Constitution. Such a course is to be confined to rare cases warrant `judicial review' by the High Court."

27. It is also well settled that the inherent power under Section 482 of the Code is to be exercised in exceptional case. This power is to be exercised in order to prevent the abuse of the process of court or to secure the ends of justice. In ***Madhu Limaye*** versus ***State of Maharashtra,*** AIR 1978 SC 47, it was held that the power was not to be resorted to, if there was a specific provision in the Code. It is also well settled that if the petitioner has an alternative remedy in the Code itself to redress his grievance, in that situation, the inherent power should not be exercised. In the instant case, the petitioner company did not make any complaint about the alleged incident of 27.7.2004 and 28.7.2004 to the SHO of the concerned area or to the Superintendent of Police of the District nor they made any written complaint to the Judicial Magistrate of the area under Section 190 or Section 200 of the Code. During the course of investigation in case FIR no. 126 dated 28.7.2004, the petitioner company did not submit any counter version to the police. After the expiry of more than six months, the instant petition was filed by the petitioner for registration of the case against the employees of the respondent company on the allegations made in the complaint.

28. In view of the facts and circumstances of the case and the legal position, which have been discussed in the earlier part of this judgment, I do not find the instant case to be an exceptional case where this court should exercise its inherent power for issuing direction to register a criminal case, as the petitioner company has not availed the remedy available to it in the Code i.e. by giving any written information to the SHO of the concerned area or to the Senior Superintendent of Police of the District or by filing a complaint to the Judicial Magistrate. Still the petitioner company has the remedy to file a private complaint in the matter before the Judicial Magistrate of the area. Thus, I do not find any merit in the instant petition and the same is, hereby, dismissed.

November 27, 2006 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**